

Title 22: HEALTH AND WELFARE
Chapter 1666-A: APPOINTMENT OF RECEIVERS

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 1666-A: APPOINTMENT OF RECEIVERS

§7931. POLICY

It is the purpose of this chapter to develop a mechanism by which the concept of receivership can be utilized for the protection of residents in long-term care facilities, clients of home health care providers, general and specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies and end-stage renal disease units. It is the intent of the Legislature that receivership be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile. [1999, c. 384, §5 (AMD).]

SECTION HISTORY

1983, c. 454, (NEW). 1995, c. 620, §4 (AMD). 1999, c. 384, §5 (AMD).

§7932. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 454, (NEW).]

1. Emergency. "Emergency" means a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents, including, but not limited to, imminent or actual abandonment of an occupied facility.

[1983, c. 454, (NEW) .]

1-A. Client. "Client" means a person who receives services from a home health agency, long-term care facility, general and specialty hospital, critical access hospital, ambulatory surgical facility, hospice agency or end-stage renal disease unit.

[1999, c. 384, §6 (AMD) .]

1-B. End-stage renal disease unit. "End-stage renal disease unit" means a facility that provides specialized services to assist individuals who have been diagnosed as having an irreversible and permanent kidney disease that requires dialysis or kidney transplantation to maintain life.

[1999, c. 384, §7 (NEW) .]

2. Facility. "Facility" means any assisted living facility, residential care facility or assisted housing program subject to licensure pursuant to chapters 1663 and 1664, any nursing facility or unit subject to licensure pursuant to chapter 405 and any private psychiatric hospital subject to licensure pursuant to chapter 405.

[2001, c. 596, Pt. B, §15 (AMD); 2001, c. 596, Pt. B, §25 (AFF) .]

2-A. General hospital. "General hospital" means an acute health care facility with permanent inpatient beds planned, organized, operated and maintained to offer on a continuous basis facilities and services for the diagnosis and treatment of illness, injury and deformity that has a governing board and an organized medical staff, offering a continuous 24-hour professional nursing care plan to provide continuous 24-hour emergency treatment and that includes the following services or organizational units:

A. Administration; [1999, c. 384, §9 (NEW).]

- B. Nursing services; [1999, c. 384, §9 (NEW).]
- C. Emergency services; [1999, c. 384, §9 (NEW).]
- D. Dietary service; [1999, c. 384, §9 (NEW).]
- E. Medical record service; [1999, c. 384, §9 (NEW).]
- F. Radiology service; [1999, c. 384, §9 (NEW).]
- G. Pathology or clinical laboratory service; [1999, c. 384, §9 (NEW).]
- H. Pharmaceutical service; [1999, c. 384, §9 (NEW).]
- I. Hospital safety program; [1999, c. 384, §9 (NEW).]
- J. Disaster plan; and [1999, c. 384, §9 (NEW).]
- K. Inservice education. [1999, c. 384, §9 (NEW).]

"General hospital" does not mean a federally controlled or state-controlled institution, a community health center, an independent outpatient diagnostic or treatment center, a doctor's office, a college infirmary or an industrial dispensary.

[1999, c. 384, §9 (NEW) .]

3. Habitual violation. "Habitual violation" means a violation of state or federal law which, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to residents.

[1983, c. 454, (NEW) .]

3-A. Home health care provider. "Home health care provider" means any business entity or subdivision of a business entity, whether public or private, proprietary or nonprofit, that is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or another therapeutic service, such as physical therapy, home health aides, nurse assistants, medical social work, nutritionist services or personal care services, either directly or through contractual agreement, in a client's place of residence. This term does not apply to any sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, preventive or health promotion services in a client's place of residence or to municipal entities providing health promotion services in a client's place of residence. This term does not apply to a federally qualified health center or a rural health clinic as defined in 42 United States Code, Section 1395x, subsection (aa) (1993) that is delivering case management services or health education in a client's place of residence. Beginning October 1, 1991 "home health care provider" includes any business entity or subdivision of a business entity, whether public or private, proprietary or nonprofit, that is engaged in providing speech pathology services.

[1999, c. 384, §10 (AMD) .]

3-B. Hospice agency. "Hospice agency" means a public agency or private organization that is primarily engaged in providing specified services to terminally ill individuals and their families. The services provided are nursing care, physicians services, physical and speech therapy, home health aid, homemaker services, pastoral counseling, social work services, occupational therapy and dietary services in addition to bereavement counseling. The care may be provided as services to patients in institutions, as respite care, as routine home care or as continuous home care.

[1999, c. 384, §11 (NEW) .]

4. Licensee. "Licensee" means any person or any other legal entity, other than a receiver appointed under section 7933, who is licensed or required to be licensed to operate a facility.

[1983, c. 454, (NEW) .]

5. Owner. "Owner" means the holder of the title to the real estate in which the facility is maintained.

[1983, c. 454, (NEW) .]

6. Resident. "Resident" means any person who lives in and receives services or care in a long-term care facility.

[1983, c. 454, (NEW) .]

7. Substantial violation. "Substantial violation" means a violation of state or federal law that presents a reasonable likelihood of serious physical or mental harm to residents or clients.

[1999, c. 384, §12 (AMD) .]

8. Transfer trauma. "Transfer trauma" means the combination of medical and psychological reactions to abrupt physical transfer that may increase the risk of grave illness or death.

[1983, c. 454, (NEW) .]

9. Ambulatory surgical facility. "Ambulatory surgical facility" means a facility with the primary purpose of providing elective surgical care to a patient who is admitted to and discharged from the facility within the same day. In order to meet this primary purpose, a facility must at least administer anesthetic agents, maintain a sterile environment in a surgical suite and share a facility fee separate from the professional license. "Ambulatory surgical facility" does not include:

A. A facility that is licensed as part of a hospital; [1999, c. 384, §13 (NEW) .]

B. A facility that provides services or accommodations for patients who stay overnight; [1999, c. 384, §13 (NEW) .]

C. A facility existing for the primary purpose of performing terminations of pregnancies; or [1999, c. 384, §13 (NEW) .]

D. The private office of a physician or dentist in individual or group practice, unless the office is certified as a Medicare ambulatory surgical center. [1999, c. 384, §13 (NEW) .]

[1999, c. 384, §13 (NEW) .]

10. Critical access hospital. "Critical access hospital" means a hospital that must first be designated and approved by the State, as long as the State also has established an approved rural hospital flexibility program, and that meets the conditions in effect on March 1, 2004 for critical access hospital status under the federal Medicare program. In addition, it must also:

A. [2003, c. 673, Pt. HH, §2 (RP) .]

B. Have a Medicare participation agreement as a hospital and be in compliance with the Medicare hospital conditions of participation when applying to become a critical access hospital; [2003, c. 673, Pt. HH, §2 (AMD) .]

C. Be certified by the State prior to January 1, 2006 as being a necessary provider of health care services to residents in the area or be located more than a 35-mile drive from any other hospital or critical access hospital. In mountainous terrain or in areas with only secondary roads, the mileage criterion is 15 miles; [2003, c. 673, Pt. HH, §2 (AMD) .]

D. Provide not more than 25 beds for acute hospital-level inpatient care:

(1) Except that a swing-bed facility is allowed to have up to 25 inpatient beds that can be used interchangeably for acute or skilled nursing facility care; and

(2) In addition to the 25-bed limit for acute inpatient care, a hospital may have distinct parts with 10 or fewer psychiatric inpatient beds or 10 or fewer inpatient rehabilitation beds, or both; and [2003, c. 673, Pt. HH, §2 (AMD).]

E. Agree to provide inpatient care for a period that does not exceed, as determined on an annual average basis, 96 hours per patient. [2003, c. 673, Pt. HH, §2 (AMD).]

F. [2003, c. 673, Pt. HH, §2 (RP).]

[2003, c. 673, Pt. HH, §2 (AMD) .]

SECTION HISTORY

1983, c. 454, (NEW). 1985, c. 770, §16 (AMD). 1995, c. 620, §5 (AMD). 1997, c. 610, §1 (AMD). 1999, c. 99, §1 (AMD). 1999, c. 384, §§6-13 (AMD). 2001, c. 596, §B15 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 673, §HH2 (AMD).

§7933. APPOINTMENT OF RECEIVER

1. Grounds for appointment. The following circumstances are grounds for the appointment of a receiver to operate a long-term care facility, home health care provider, general and specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies and end-stage renal disease units.

A. A long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit intends to close but has not arranged at least 30 days prior to closure for the orderly transfer of its residents or clients. [1999, c. 384, §14 (AMD).]

B. An emergency exists in a long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that threatens the health, security or welfare of residents or clients. [1999, c. 384, §14 (AMD).]

C. A long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is in substantial or habitual violation of the standards of health, safety or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients. [1999, c. 384, §14 (AMD).]

This remedy is in addition to, and not in lieu of, the power of the department to revoke, suspend or refuse to renew a license under the Maine Administrative Procedure Act.

[1999, c. 384, §14 (AMD) .]

2. Who may bring action. The commissioner or acting commissioner may bring an action in Superior Court requesting the appointment of a receiver.

[2005, c. 397, Pt. A, §27 (AMD) .]

3. Procedure for hearing. The procedure for a hearing shall be as follows.

A. The court shall hold a hearing not later than 10 days after the action is filed, unless all parties agree to a later date. Notice of the hearing shall be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility, for not less than 3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied. [1983, c. 454, (NEW).]

B. A temporary receiver may be appointed with or without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility that must be remedied immediately to insure the health, safety and welfare of the residents. The temporary appointment of a receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon appointment of a temporary receiver, the department shall proceed forthwith to make service as provided in paragraph A, and a hearing must be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the temporary receivership. On 2 days' notice to the receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a receiver that has been entered without notice, and in that event the motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. [2011, c. 559, Pt. A, §25 (AMD) .]

[2011, c. 559, Pt. A, §25 (AMD) .]

4. Who may be appointed receiver. The court may appoint any person deemed appropriate by the court to act as receiver, except any state employee. The court may remove a receiver for good cause.

[1983, c. 454, (NEW) .]

5. Compensation of receiver. The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with such surety as the court may require. Any expenditures shall be paid from the revenues of the facility.

[1983, c. 454, (NEW) .]

SECTION HISTORY

1983, c. 454, (NEW). 1995, c. 620, §6 (AMD). 1997, c. 610, §2 (AMD). 1999, c. 384, §14 (AMD). 2001, c. 354, §3 (AMD). 2005, c. 397, §A27 (AMD). 2011, c. 559, Pt. A, §25 (AMD).

§7934. POWERS AND DUTIES OF THE RECEIVER

1. Powers and duties. A receiver appointed pursuant to this chapter has such powers as the court may direct to operate the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit and to remedy the conditions that constituted grounds for the receivership, to protect the health, safety and welfare of the residents or clients and to preserve the assets and property of the residents or clients, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility property.

The receiver shall make reasonable efforts to notify residents or clients and family that the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is placed in receivership. The owner and licensee are divested of possession and control of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit during the period of receivership under such conditions as the court specifies. With the court's approval, the receiver has specific authority to:

A. Remedy violations of federal and state regulations governing the operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit; [1999, c. 384, §15 (AMD) .]

B. Hire, direct, manage and discharge any employees, including the administrator of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit; [1999, c. 384, §15 (AMD).]

C. Receive and expend in a reasonable and prudent manner the revenues of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit due during the 30-day period preceding the date of appointment and becoming due thereafter; [1999, c. 384, §15 (AMD).]

D. Continue the business of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit and the care of residents or clients; [1999, c. 384, §15 (AMD).]

E. Correct or eliminate any deficiency of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that endangers the safety or health of the residents or clients, if the total cost of the correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver; and [1999, c. 384, §15 (AMD).]

F. Exercise such additional powers and perform such additional duties, including regular accountings, as the court considers appropriate. [1995, c. 620, §7 (AMD).]

[1999, c. 384, §15 (AMD) .]

2. Revenues of the facility. Revenues of the facility must be handled as follows.

A. The receiver shall apply the revenues of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, or where payment of the debts will interfere with the purposes of the receivership. Priority must be given by the receiver to expenditures for current direct resident or client care. Revenues held by or owing to the receiver in connection with the operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit are exempt from attachment and trustee process, including process served prior to the institution of receivership proceedings. [1999, c. 384, §15 (AMD).]

B. The receiver may correct or eliminate any deficiency of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit that endangers the safety or health of the resident or client, if the total cost of the correction does not exceed \$3,000. On application by the receiver, the court may order expenditures for this purpose in excess of \$3,000. The licensee or owner may apply to the court to determine the reasonableness of any expenditure over \$3,000 by the receiver. [1999, c. 384, §15 (AMD).]

C. In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents or clients, the receiver may petition the court for permission to borrow for these purposes. Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee and the department. The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy or

if it determines that the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents or clients for the limited period of time that they are awaiting transfer. The purpose of this provision is to protect residents or clients and to prevent the closure of long-term care facilities, home health care providers, general hospitals, specialty hospitals, critical access hospitals, ambulatory surgical centers, hospice agencies or end-stage renal disease units that, under proper management, are likely to be viable operations. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means. [1999, c. 384, §15 (AMD).]

[1999, c. 384, §15 (AMD) .]

3. Avoidance of preexisting leases, mortgages and contracts. A receiver may not be required to honor a lease, mortgage, secured transaction or other contract entered into by the owner or licensee of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit if the court finds that:

A. The person seeking payment under the agreement has an ownership interest in the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit or was related to the licensee, the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit by a significant degree of common ownership or control at the time the agreement was made; or [1999, c. 384, §15 (AMD) .]

B. The rental, price or rate of interest required to be paid under the agreement is in excess of a reasonable rental, price or rate of interest. [1983, c. 454, (NEW) .]

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any known owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received such notice.

Notwithstanding this subsection, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

[1999, c. 384, §15 (AMD) .]

4. Closing of long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit. The receiver may not close the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit without leave of the court. In ruling on the issue of closure, the court shall consider:

A. The rights and best interests of the residents or clients; [1995, c. 620, §7 (AMD) .]

B. The availability of suitable alternative placements; [1983, c. 454, (NEW) .]

C. The rights, interest and obligations of the owner and licensee; [1983, c. 454, (NEW) .]

D. The licensure status of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit; and [1999, c. 384, §15 (AMD).]

E. Any other factors that the court considers relevant. [1995, c. 620, §7 (AMD).]

When a long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit is closed, the receiver shall provide for the orderly transfer of residents or clients to mitigate transfer trauma.

[1999, c. 384, §15 (AMD) .]

SECTION HISTORY

1983, c. 454, (NEW). 1995, c. 620, §7 (AMD). 1999, c. 384, §15 (AMD).

§7935. TERMINATION OF RECEIVERSHIP

The receivership terminates when the court certifies that the conditions that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents or clients are safely relocated. The court shall review the necessity of the receivership at least semiannually. [1995, c. 620, §8 (AMD).]

A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court. [1995, c. 620, §8 (AMD).]

SECTION HISTORY

1983, c. 454, (NEW). 1995, c. 620, §8 (AMD).

§7936. LIABILITY OF RECEIVER

No person may bring suit against a receiver appointed under section 7933 without first securing leave of the court. Except in cases of gross negligence or intentional wrongdoing, the receiver is liable in his official capacity only and any judgment rendered shall be satisfied out of receivership assets. [1983, c. 454, (NEW).]

SECTION HISTORY

1983, c. 454, (NEW).

§7937. COURT ORDER TO HAVE EFFECT OF LICENSE

An order appointing a receiver under section 7933 has the effect of a license for the duration of the receivership. The receiver is responsible to the court for the conduct of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit during the receivership, and a violation of regulations governing the conduct of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, if not promptly corrected, must be reported by the department to the court. [1999, c. 384, §16 (AMD).]

SECTION HISTORY

1983, c. 454, (NEW). 1995, c. 620, §8 (AMD). 1999, c. 384, §16 (AMD).

§7938. RULE-MAKING AUTHORITY TO IMPLEMENT RECEIVERSHIP LAW

The department may adopt regulations as necessary, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, to implement this chapter. [1983, c. 454, (NEW).]

SECTION HISTORY

1983, c. 454, (NEW).

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